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in question, the new means were warranted by the decision on the basis of necessity. According to the case of *Township of Ada v. Kent Cir. Judge*, 114 Mich. 77, this element should have no bearing on the question. A close case is found in *Hopkins Co. v. St. Bernard Coal Co.*, 114 Ky. 153. There acting under an order of court pursuant to constitutional power, the sheriff sent out special guards. Their salary was over the constitutional limit. The court held the payment of the salary to be valid, however, saying: "The duty of preserving the public peace and protecting life and property cannot be avoided because the income provided for the year by the fiscal court will be insufficient." But here the guards were expressly provided for by statute and the court admits that this is not a debt incurred under a contract "which it is optional with the county to incur." In those decisions which make a distinction between voluntarily and involuntarily incurred debts, as in the principal case, it is primarily a question of what each court considers optional, and as the dissenting opinion points out and as is intimated in the case of *Lake Co. v. Rollins*, 130 U. S. 662, even with such a distinction, the fact that the Constitution provides for certain specified acts does not provide a class of obligations called compulsory obligations unless there is a necessary inability to give both these acts and the clause as to indebtedness their exact and literal fulfillment.

NUISANCE—WHAT CONSTITUTES—AUTOMOBILE GARAGE.—Plaintiff brought an action to obtain a permanent injunction to restrain defendant from opening and maintaining a public garage on a lot directly across the street and about seventy feet distant from plaintiff's dwelling, in a residential district. *Held*, that the establishment of an automobile garage in a residential district is not a nuisance per se, and injunction refused. *Sherman v. Livingston* (1910), 128 N. Y. Supp. 581.

The appearance of the garage is so recent that its right to exist in the residential district of a city has been passed upon by only a few courts. In *Stein v. Lyon*, 91 App. Div. 593, 87 N. Y. Supp. 125, the court declared that a garage is not a nuisance per se, and the same conclusion was reached in the case of *Diocese of Trenton v. Toman*, 74 N. J. Eq. 702, 70 Atl. 606, these courts evidently taking the view expressed in the principal case that a public garage may be so conducted that its objectionable features may be eliminated, or at least minimized to an extent that its operation will not unduly annoy or inconvenience those who reside near by. There is no question, however, that they may be so conducted as to become nuisances, and in *O'Hara v. Nelson*, 71 N. J. Eq. 161, 63 Atl. 836, the operation of a garage was enjoined where gasoline was to be stored upon the premises in large quantities so that there was imminent danger from explosion. There would seem to be no good reason for holding a garage a nuisance per se when livery stables in a city are held to be not necessarily nor prima facie a nuisance. *Durfey v. Thalheimer*, 85 Ark. 544, 109 S. W. 519; *Bonaparte v. Denmead*, 108 Md. 174, 69 Atl. 697.

PARTNERSHIP—ILLEGALITY—RECOVERY ON EXECUTED CONTRACT.—Plaintiff, a married woman, left her husband and eloped with defendant, with whom

she lived while she was obtaining a divorce from her husband. They agreed that they would manage their affairs as a partnership and would share equally in the profits or losses; they accumulated property under this arrangement and sold it; defendant retained most of the proceeds of the sale, but agreed to pay plaintiff her share. In a suit to recover plaintiff's share of the proceeds of the partnership enterprise, the lower court denied relief because the contract of partnership was tainted with immorality. On appeal it was *held*, conceding, but not deciding, that the partnership was illegal, yet defendant, having received the profits of the partnership, is liable to the other for an agreed division thereof. *Mitchell v. Fish* (1910), — Ark. —, 134 S. W. 940.

This decision as to the rights of the members of an illegal partnership is contrary to the numerical weight of authority. That one member of an illegal firm will not be compelled to pay over to another his agreed share: *Sykes v. Beadon*, 11 Ch. Div. 170; *Tenney v. Foote*, 95 Ill. 99; *Hunter v. Pfeiffer*, 108 Ind. 197; *Snell v. Dwight*, 120 Mass. 9; *Jackson v. McLean*, 100 Mo. 130; *Woodworth v. Bennett*, 43 N. Y. 273; *Croft v. McConough*, 79 Ill. 346; *Coal Co. v. Coal Co.*, 68 Pa. St. 173; *Stewart v. M'Intosh*, 4 Har. & J. (Md.) 233; *Gould v. Kendall*, 15 Neb. 549, etc. Some courts hold that when the business has been wound up there can be a recovery even without a promise to pay. *Brooks v. Martin*, 2 Wall. 70 (but see *McMullen v. Hoffman*, 174 U. S. 639); *Willson v. Owen*, 30 Mich. 474. Some other courts in accordance with the decision of the principal case allow a recovery if there has been an express promise to pay. *Belcher v. Conner*, 1 S. C. 88; *King v. Winants*, 71 N. C. 469; *De Leon v. Trevino*, 49 Tex. 88; *Watson v. Fletcher*, 7 Grat. 1; *Crescent Ins. Co. v. Bear*, 23 Fla. 50. But as said before the numerical weight of authority is against the principal case, and it would seem that the reasoning of the courts denying a right of recovery is better than that of the principal case. The holding in this case amounts to the enforcement of an illegal contract, for the agreement to pay over the proceeds is a part of the partnership contract and the whole partnership contract is illegal.

PRINCIPAL AND AGENT—ESTOPPEL TO DENY AUTHORITY OF AGENT.—A due bill was given for money advanced Chelsea Club \$60, and signed by one M as agent for the club. It appeared that the money was advanced for the benefit of the club, and was so expended, though there was no proof that M was authorized to borrow money for the club. *Held*, two justices dissenting, that the principal is estopped from denying the authority of the agent to give the due bill. *Wall v. Chelsea Plantation Club* (1911), — S. C. —, 70 S. E. 434.

There is no doubt that M did not have authority to borrow this money. Power to borrow must be express or strictly necessary, and is never implied from general powers. 31 Cyc. 1395. Nor is it denied by any of the justices that, had it been shown that the money had been used for the defendant, there could be a recovery in quasi contract for the actual benefit derived. But to hold that the defendant is estopped to deny the authority to execute the due bill, is a different matter, for this amounts to holding that a man is liable on a contract he never authorized or ratified. There is no ratification here